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IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for
Los Angeles County and the COUNTY OF LOS ANGELES,
Respondents.

**On Writ of Certiorari
To The Court of Appeal
of the State of California**

**BRIEF OF THE LEAGUE OF WOMEN VOTERS OF
CALIFORNIA AS AMICUS CURIAE IN SUPPORT OF
PETITIONER**

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I.

STATEMENT OF INTEREST AND
SUMMARY OF ARGUMENT

This case involves a challenge to the validity of Section 2(a) of California's Proposition 13.¹ Its outcome will have a very real impact on millions of Californians. In this *Amicus Curiae* Brief, the League of Women Voters of California (the "League") strongly supports the basic argument of petitioner: Proposition 13 violates the equal protection guarantees of the Fourteenth Amendment to the U.S. Constitution by creating an irrational and grossly disproportionate system of taxation for similarly situated citizens.²

And despite the significant issues that are raised by asking this Court to strike down a state adopted system of taxation under our federalist form of government, the League believes that each citizen's right to equal protection under the law must take precedence over the ability of a state to enforce an unfair and discriminatory system of taxation. The League therefore joins the petitioner in asking this Court to

¹ Proposition 13 was a State Constitutional Amendment, adopted in 1978 through the so-called "Jarvis-Gann" initiative, which added Art. XIII A to the California Constitution. The operation of Proposition 13 has been set forth in detail by petitioner and will not be repeated herein. See Petitioner's Brief on the Merits, *passim*. Like petitioner, the League does not challenge the right of the people to limit the level of taxation imposed by a state—the principal objective of Proposition 13. Rather, like petitioner, the League argues that Section 2(a) unconstitutionally allocates the property tax burden among taxpayers.

² Petitioner and respondents have both consented to the filing of this *amicus* brief. Their letters of consent are being lodged with the Clerk of the Court.

strike down Section 2(a) of Proposition 13 as unconstitutional.

A. Statement of Interest.

The League is a nonprofit, nonpartisan organization open to all women and men. Since 1920, the League has promoted informed and active citizen participation in government. A multi-issue organization, the League's voice has been heard on a full slate of issues, including voting rights, education, housing, child care, and campaign and initiative reform. Throughout the years, the League has worked as a "political watch dog" towards a single goal: fair and equal treatment for all people.

In the spring of 1977, the League took part in a comprehensive study of assessment practices and property taxes. The resulting consensus was that property taxes should be broad-based, equitably allocated, and uniformly applied so that all property owners bear their fair share of the burden. Because Proposition 13 undermines these ideals, the League campaigned against it when it appeared on the June 1978 ballot. The League was unsuccessful, and what it feared became a reality: similarly situated taxpayers are being taxed at grossly different rates.³ Al-

³ See *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 1271, 275 Cal. Rptr. 684 (1990) ("Because we find it is not reasonably disputable that article XIII A has resulted in gross disparities in the assessments of properties with similar current market values, we take judicial notice of that fact and treat it as having been pled"). As noted by one commentator, "[e]leven years after the passage of Proposition 13, the contours of the abstract concerns of the petitioners in *Amador Valley* have been filled in with facts which reflect significant disparities between the property tax burdens placed on owners of otherwise similar prop-

though not a politically popular position, the League today, as it did thirteen years ago, seeks to eliminate the unfair and inequitable aspects of Proposition 13.

B. Summary of Argument.

Born out of a so-called "taxpayer revolt" in 1978, there is no doubt today that Proposition 13 has created an unfair and inequitable system of taxation. There is nothing fair or equitable in requiring a new property owner to pay 10, 15, 17, and even 583 times more property taxes than his or her neighbors solely because the neighbors have owned their property for a longer period of time. Indeed, already burdened by higher mortgage costs, as well as ever-increasing development fees imposed by local governments, these newcomers are the least able to carry this disproportionate tax load.

As a humble *amicus curiae*, and pursuant to the Rules of this Court, the League will not repeat all of the arguments that are being made in the other briefs of petitioner and other amici. These other briefs will develop the core facts that demonstrate the unfairness of Proposition 13, and will discuss and analyze the legal precedent most directly on point with the legal issues raised by this constitutional challenge.

Instead, the League offers observations gained from a different perspective—one that attempts to look at the bigger picture and how this challenge fits within

erties—disparities which are tied to the date of purchase of the property, not to differences in the actual value of the property." Harvey, *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County: Equal Protection in Property Taxation, a New Challenge to Proposition 13?*, 26 San Diego L. Rev. 1173, 1194 (1989).

broadier concepts that have been the subject of action by this Court over its history. This broader view of the dispute suggests that the Court has been asked to resolve a conflict between two fundamental concerns of our Republic: our belief in a federalist form of government that includes sovereign states, and our concern that all citizens are entitled to equal protection under the law.

Petitioner is asking this Court to not only intervene in the internal workings of a sovereign state, but to overturn an amendment to that state's constitution that was adopted by a vote of the electorate. Asking a federal court to insert itself so dramatically into the affairs of a state thus raises concerns under our cherished belief in a federalist form of government.

On the other hand, petitioner is carrying the banner of equal protection when it makes this request—a banner that represents a fundamental concept that was articulated in our Declaration of Independence; a concept that brought this Country into, and out of, a bloody civil war; a concept that guided this Country successfully through the civil rights movement of the 1950's; and a concept that is very much a fundamental part of what sets the United States apart from other governments today.

The founders of this nation were enlightened enough to see that such fundamental conflicts would arise from time to time, and created a Supreme Court to resolve these conflicts. This Brief by a humble *amicus curiae* is submitted, with all respect and deference, to hopefully assist the Court in making the correct decision.

The League believes that the right of the citizens of California to equal protection under that State's

property taxation system takes precedence over the right of the State to implement an unfair, and largely ineffective, taxation system that can be replaced by numerous other options that achieve the same tax policies without discriminating against an unprotected segment of the citizenry.

The League balances the competing interests in this way because: (1) the inequities under Proposition 13 shock the conscience; (2) Proposition 13 reflects a constitutionally improper attempt by an entrenched electorate to shift burdens of general applicability to an unprotected class of newcomers; (3) Proposition 13 reflects a breakdown of the political process that has resulted in an inequity that cannot be cured absent judicial intervention; and (4) the interests of federalism are not threatened because of the availability of numerous other ways in which California can address the issue of property taxation in a manner that does not injure fundamental American values.

Indeed, so obvious are the disparities in treatment caused by Proposition 13, that the California Senate Commission on Property Tax Equity and Revenue very recently recommended both the elimination of the "*substantial inequities*" created by Proposition 13 and the consideration of certain alternatives to Proposition 13's discriminatory effects in the event this Court declares the law unconstitutional.⁴

⁴ The Commission, which was established to examine California's tax system, issued its report in June of 1991, finding that Proposition 13 "has generated substantial inequities for property taxpayers," "does not self-correct or equalize" these inequities, and "offend[s] a policy of equal taxation." *Report of the Senate Commission on Property Tax Equity and Revenue to the Cali-*

Thus, should this Court strike down Section 2(a) of Proposition 13, the Senate Report makes it clear that alternatives to these inequitable methods of taxation exist—alternatives that would create a fair, equitable, and constitutionally acceptable method of property taxation in California. The League thus requests this Court to strike down Section 2(a) so that California can begin the task of rebuilding a fair system of taxation.

II. ARGUMENT

Originally enacted to reduce a perceived unfairness in California's property tax system, Proposition 13 has itself created a grossly unfair and inequitable system of taxation in California. Under this system, those

*for*nia State Senate, *passim* (June 1991) (the "Senate Report") (emphasis added). The Senate Report sets forth various recommendations for the creation of a fair and equitable system of taxation. *Id.* According to the Commission, three compelling reasons exist to invoke this analysis: the impending legal challenge in this Court, the budget deficit on the state and local level to which the erosion of the property tax base under Proposition 13 has contributed, and the overriding goal of tax equity itself. Senate Report, at 2-3. A copy of the Senate Report has been lodged with the Clerk of the Court. In Resolution 42, wherein the Senate created the Commission, the Senate noted that: "Immediately upon the passage of Proposition 13, disparities were recognized in the treatment of homeowners and commercial property owners in similar situations who had purchased homes at different time periods This disparity has increased over time and California's system of tax assessments may result in property tax payments which fall heavily upon young families, many of whom already have difficulty in purchasing the median priced California home." Senate Report, Appendix A, at 57.

who have owned property since 1975 have escaped their fair share of the State's tax burden while those who later purchased property have been forced to subsidize the former group on an ever-increasing scale. These inequities will most likely continue to grow in the future. Fairness and equity have vanished and, absent a declaration from this Court that Section 2(a) of Proposition 13 is unconstitutional, will likely not return for some time—if ever.

A. Proposition 13 is Grossly Unfair.

It is undeniable that Proposition 13 has created great disparities in the levels of taxation between similarly situated taxpayers.⁵ For example, a sampling of owner-occupied homes in the 1988 assessment rolls by the State Board of Equalization indicated that about 2 million homes, 44% of the homes, had a 1975 acquisition base year. Senate Report, at 33. Owners of these homes paid only 25 percent of the property tax—about \$1.05 billion in taxes in 1988-89. The remaining 2.5 million homeowners paid 75 percent of the property tax—about \$3.15 billion in taxes. *Id.* Thus, after only thirteen years of Proposition 13's operation, long-time homeowners carry roughly one-quarter of the tax load while the other half, the State's new homeowners, bear nearly three-quarters of the load. *Id.* This disparity will most likely continue to increase in future years.

⁵ The studies conducted by petitioner demonstrate multiple examples of the wide disparity of taxes paid by long-time property owners versus recent owners. The studies also show that wealthier homeowners tend to receive the greatest benefits under Proposition 13, both absolutely and percentage wise. As the records in this case indicate, differentials of over 2,000% will be common before the end of this decade if current trends continue.

The immediate effect of Proposition 13 on California taxpayers was a substantial reduction of their property tax bills. Senate Report, at 26. The immediate effect of Proposition 13 on local governments was a dramatic loss of revenue. In the fiscal year following the enactment of Proposition 13, local governments faced revenue losses of approximately \$7 billion—an amount equal to 57 percent of property tax revenues and 22 percent of local revenues from all sources. Senate Report, at 28.⁶ As a result, the Legislature was forced to adopt a “massive emergency fiscal assistance plan for local governments.” *Id.* This “bail-out” was available only because of the large surplus accumulated in the General Fund. That surplus soon dwindled, and for the fiscal year 1991-92 the State faces a \$14 billion deficit. *Id.*, at 3.

The results of this loss of revenue are two-fold: (1) California’s infrastructure is deteriorating and becoming more inadequate with the passage of every day (*id.*, at 47)⁷; and (2) the burden of attempting to ad-

⁶ As a result, the passage of Proposition 13 has been called “the most significant fiscal act of the people of California in modern times.” Henke and Woodlief, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F.L. Rev. 251, 253 n.16 (Winter/Spring 1988). For example, in 1977, the property tax represented the mainstay of local government budgets; it accounted for 36.3% of county revenues, 22.4% of city revenues, and 67.4% of non-enterprise special district revenues. *Id.* at 251-52 n.3. The dramatic overnight reduction of revenue from this major source of funding therefore had a significant impact on local government budgets.

⁷ The California Legislative Analyst’s Office recently published a booklet discussing the State of California’s growing need to “revitalize and expand” its infrastructure (i.e. highways, schools, jails, utility systems, and parks). Hill, *State Infrastructure, Per-*

dress these inadequacies is increasingly being placed on newcomers (*id.*, *passim*). Moreover, faced with a cap on taxation rates, local governments are continually looking for new ways to raise additional revenue, often at the expense of the newcomer. For example, since the passage of Proposition 13, “the widespread increase in developer fees (estimated now at \$3 billion annually) has been used by local governments . . . as a source of local revenue.”⁸ These fees, of course, are paid solely by newcomers.

spectives and Issues, Reprint 1991-92 Budget (Leg. Analyst’s Office Feb. 1991). This need will become even more pressing in the years ahead as California is faced with dynamic economic and demographic changes. For example: (1) demographic projections reveal that California schools will have to accommodate an average of 210,000 new pupils per year for the next decade. Likewise, higher education enrollment is expected to grow by thirty to fifty percent by the year 2005. Estimated capital outlays towards education may reach \$19.3 billion between 1991 and 1995; (2) estimated capital outlays for transportation, including recovery from damage caused by the Loma Prieta earthquake last year, may reach \$12.1 billion in the next five years; and (3) given anticipated inmate populations, the California penal system may require up to \$5.0 billion over the next five-year period to meet demand. The burden of providing these services for the general population is increasingly falling on the shoulders of the newcomer. *Id.* at 3-5. And while it is not the role of this Court to set California’s policy as to how to raise revenues, it is the role of this Court to insure that the implementation of such policies does not violate the U.S. Constitution.

⁸ Senate Report, at 48. In some areas, developer fees have reached \$14,000.00 for even modest homes. See Bay Area Council, *Taxing the American Dream: Developer Fees & Housing Affordability in the Bay Area*, at 3 (1988). These fiscal constraints not only suggest that local officials are more likely to approve developments that are high revenue generators, but that, when homes are built, the price of these few homes is greatly in-

The situation is equally dire for new business owners. Like homeowners, business owners must pay a much higher price for their property than long-standing competitors, they may be required to pay huge developer fees, and they must bear vastly higher property tax payments than long-standing competitors. New business owners must then either pass the higher taxes on to their customers (and hence charge more than long-time competitors) or reduce any profits they would otherwise realize. Neither outcome is a welcome result.

All of these burdens, of course, fall on those least able to bear this burden—the newcomers. The newcomers will pay the highest price for a house or business in the neighborhood (and thus a higher mortgage payment), pay the passed-on costs of substantial developer fees, and then, on top of all of this, pay 10, 15, 17, or even 583 times the property taxes of his or her neighbors. The newcomers, whether young people, immigrants, military personnel, poor people, or relocated employees, must carry this burden even though they never had the opportunity to purchase a home or business at the time of the previous low assessment, will never have the opportunity to join the class of low assessment taxpayers, and will never have their tax payments equalized over time with the taxes of the low assessment group.

creased. See Senate Report, at 48. The result being the loss of affordable housing.

B. The "Tyranny Of The Majority" Aspects Of Proposition 13 Make This A Case Where The Court Should Exercise Its Role Within The Federal System As A Supervisor Of The Political Process.

The Fourteenth Amendment requires that no person shall be denied equal protection of the law by any state. Proposition 13 runs afoul of this requirement because the discriminatory "tyranny of the majority" protections for long-term homeowners have created a taxation system that improperly treats some citizens (long-term homeowners) more equally than others (short-term homeowners).

Like petitioner, the League does not challenge the right of the people to enact legislation via an initiative. However, laws enacted directly by the people, like any other, are subject to constitutional scrutiny. As stated by this Court in *Lucas v. Colorado General Assembly*, 377 U.S. 713 (1964): "A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause" *Id.* at 736-37.

According to Chief Justice Burger in *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290 (1981), "[i]t is irrelevant that the voters rather than a legislative body enacted [this law], because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation." *Id.* at 295. In fact, Professor Eule has persuasively argued - that "judicial review of direct

democracy frequently calls for less rather than more [judicial] restraint." Eule, *Judicial Review of Direct Democracy*, 99 Yale L.J. 1503, 1507 (1990).⁹

And while any court should be cautious in examining the will of the people when they have enacted a law, "[i]t is plain that the electorate as a whole, whether by referendum or otherwise, could not order . . . action violative of the Equal Protection Clause." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 448 (1985).

Proposition 13 demonstrates the dangers of invoking the "tyranny of the majority" when utilizing the initiative process because it invidiously divides the citizens of California into ever-increasing permanent classes with those at the back of the line increasingly paying for those at the front of the line. It thus requires the newcomer to pay an ever-increasing share of the needs of the general public as a whole.

In this regard, the League believes that the Court's reasoning in *Nollan v. State Coastal Commission*, 483 U.S. 825 (1987), is instructive. In *Nollan*, this Court found that singling out one property owner or group of owners to address a general problem was (absent compensation) an unconstitutional taking. Such is also the case here. Proposition 13 singles out new property

⁹ Studies addressing Proposition 13 support this argument, finding that the electorate was behaving rashly, and experiencing a "surge of recklessness, a period of nearly blind emotion." . . . Even a calm, well-informed voter possesses neither the time nor the expertise to appreciate the ramifications of a fiscal blockbuster such as Proposition 13." Henke and Woodlief, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F.L. Rev. 251, 255 (Winter/Spring 1988).

owners to bear a disproportionate burden of the State's taxation needs, a classic example of what *Nollan* prohibits—the government "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Id.* at 835-36 n.4.

The raw political power of the majority to look after their self-interests at the expense of the minority is forcefully demonstrated in Proposition 13.¹⁰ Newcomers will always be a minority, and since Proposition 13 is a part of the State Constitution, the self-interested majority has essentially put its repeal out of reach of ordinary political processes.¹¹ Consequently, the newcomer has no realistic hope for relief, except from the courts.

As this Court has noted, permitting "states to divide citizens into expanding numbers of permanent classes . . . could produce nothing but discord and

¹⁰ "The Founding Fathers were cognizant of the detrimental effects of 'mob rule' or direct democracy when they formulated our system of representative government. . . . Today's voters are not in a position to understand the complex intricacies of laws that profoundly affect the 'liberty' of others. . . . The need for judicial review increases as direct democracy increases and this is particularly true where the voters are not sufficiently informed as to the ramifications of the law. Thus, when issues are presented that are subtle, silent, or complex . . . the courts should closely scrutinize the law in order to avoid the tragic possibilities of 'mob rule.'" Mass, *Proposition 103: Too Good To Be True*, 12 Whittier L. Rev. 403, 432-33 (1991).

¹¹ And even if the members of the Legislature were willing to challenge the voters who see personal benefits in keeping an admittedly unfair system, arguably an act equivalent to political suicide, they are powerless to do so absent a constitutional amendment (an unlikely event at best).

mutual irritation." *Zobel v. Williams*, 457 U.S. 55, 64 & n.12 (1982). This is a good description of the situation today in California, and there could scarcely be a clearer example of legislation which, without any justification other than "I got here first," discriminates between similarly situated citizens. Such a law effectively creates an ever-increasing number of classifications based simply on duration of residence in a particular home, reduces taxes on an ever-increasing basis for long-term homeowners, and forces new homeowners on an ever-increasing basis to subsidize the government services received by these long-term homeowners. Although Proposition 13's unfair and unequal system of property taxation has stood the test of time, it does not stand up to constitutional scrutiny.¹²

In *Zobel*, this Court recognized that allowing a state to draw such distinctions between citizens would lay the foundation for a slippery slope of ever-growing unequal treatment:

¹² This result would be consistent with *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, W. Va.*, 488 U.S. 336 (1989), wherein this Court unanimously held that for a state to tax owners of recently acquired properties at fair market value while taxing "neighboring comparable property which has not been recently sold . . . at only a minor fraction of that figure" violated the Equal Protection Clause. *Id.* at 342. To pass constitutional scrutiny, "the seasonal attainment of a rough equality in tax treatment of similarly situated property owners" was required. *Id.*, at 343. This case, much more than the practices of the local assessor in *Allegheny*, presents a dangerous national precedent (if allowed to stand). Indeed, it would appear illogical to conclude that it is proper for California to utilize a State-wide discriminatory system of taxation while it was improper for the Webster County assessor to utilize a similar enforcement procedure at the local level.

If the states can make the amount of a cash dividend depend upon length of residence, what would preclude varying university tuition[,] . . . limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile. *Could states impose different taxes based on length of residence?* . . . [This scheme] would permit the states to divide citizens into expanding numbers of permanent classes.

Id. at 64 (emphasis added). Justice Brennan concurred by stating:

In my view, it is difficult to escape from the recognition that underlying any scheme of classification on the basis of duration of residence, we shall almost invariably find the unstated premise that "some citizens are more equal than others." We rejected that premise and, I believe, implicitly rejected most forms of discrimination based on length of residence, when we adopted the Equal Protection Clause.

Id. at 71 (emphasis added). Thus, despite concerns over the delicate balance of the sometime competing goals of federalism and equal protection, this Court has not hesitated in the past to follow the constitutional demand of equal protection in the proper circumstances. See *Allegheny*, 488 U.S. at 343.¹³

¹³ See also *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 616-17 (1985); *Curtis, California's Proposition v. Webster County West Virginia: The Elephant Spooked by the Mouse*, 7 J. Prop.

On the other hand, what will happen if this Court condones Proposition 13 and allows it to stand? Most likely it will remain in place in California, thereby ever-widening the gap between the Proposition 13 haves and have-nots. Not wanting to be left out, long-time homeowners in other states may well pick up the Proposition 13 banner and pass similar legislation. Indeed, since the current homeowners (and voters) of any state would benefit both today and on an ever-increasing basis in the future from such legislation, the citizens of many states may pass such legislation.

The result, of course, being that people in those states may become land-locked and reluctant to move to other Proposition 13-like states because they will then become taxation victims, not beneficiaries, of the "welcome stranger" effect of these laws. People living in non-Proposition 13-like states may also tend to avoid moving to Proposition 13-like states because of the fear of bearing the unfair newcomer tax burden in those states. The consequence being a significant impact on the right to travel.¹⁴

Tax 7, 28 (1988) ("Article XIII A does not establish a property tax class founded on categories previously approved by the U.S. Supreme Court such as geography, the nature or use of the property, business versus non-business use, income, wealth, relationship to the deceased, wage-earner versus self-employed, or any of the many other possible individual distinctions employed in income, property, and other tax systems. The distinction is date of purchase"); *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-53 (1918) ("And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property").

¹⁴ See *Zobel v. Williams*, 457 U.S. 55, 68 (1982) (Brennan, J., concurring) ("For if each state were free to reward its citizens

C. Enforcement Of Equal Protection Values Will Not Be A Significant Hardship On California, Nor Will It Restrict California's Taxation Options In Any Significant Way.

The enforcement of the Equal Protection Clause here will not be a significant hardship on California, nor will it restrict California's taxation options in any significant way. Indeed, the Senate Commission has already studied and prepared for the possible invalidation of Proposition 13 by this Court. The Commission considered a wide number of alternatives to Proposition 13 that would restore equity to the system and protect local governments from fiscal insolvency while simultaneously protecting homeowners from being "taxed out of their homes."¹⁵

incrementally for their years of residence, so that a citizen leaving one State would thereby forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive").

¹⁵ In fact, the Commission found certain outgrowths of Proposition 13 so troubling that it recommended their abolishment even absent a ruling from this Court declaring Section 2(a) of Proposition 13 unconstitutional. For example, under the current system, property owned by corporations is not reappraised unless over 50% of the corporate shares are sold to one buyer. Given this requirement, some corporate entities have devised ingenious ways to escape assessment, for example, by selling property in stages. The Commission recommended amending the definition of a "change of ownership" to provide for a reassessment in light of a *substantive* sale. The Commission also recommended that inherited real property no longer remain exempt from reassessment, because this provision favors the children of homeowner parents over those of non-homeowner parents. The Commission recognized that this privilege can be perpetuated successively, thereby forestalling market revaluation

If the Court invalidates Proposition 13, California's tax structure will revert back to an equally applied market valuation scheme. Senate Report, at 4. The Commission believes this market valuation system to be more reasonable than an acquisition value system provided that homeowners are protected. Accordingly, the Commission recommends phasing into a market valuation system in order to ease the transition for homeowners. The Commission recommends the following transition:

1. The State could return to market value assessments for all new and current property taxpayers, excepting those who elect to phase into market value. *Id.*

2. For those who elect to phase into market value, the Board of Equalization could increase the annual assessment cap by 2% per year until full market value is reached. This increase could be achieved gradually in order to protect current homeowners from sudden and large property tax increases. For example, in the first year, the cap could be raised to 4%, then 6%, and so on until full market value is reached. *Id.* at 5.

3. To avoid greatly increasing taxes to long-time property owners and generating governmental revenue windfalls, the Commission recommends maintaining *revenue neutrality* by lowering the country-wide tax rate. *Id.* at 5. The desired total revenue could be adjusted annually to take inflation and population growth into account. This would insure that the re-

indefinitely. Finally, the Commission found fault with AB 8, the formula with which property tax revenue is distributed to local government jurisdictions. See Senate Report, at 1-16.

turn to market valuation does not result in an overall increase in the property tax burden.

4. In order to further protect low income homeowners, the Commission recommends implementing a homeowners' exemption that would more realistically reflect the California housing situation.

Thus, California has already examined and is prepared to implement a fair, equitable, and revenue neutral property taxation system.

III.

CONCLUSION

It is undeniable that Proposition 13 has created a grossly unfair and inequitable system of taxation in California. Unfortunately, the political reality of Proposition 13 is that neither the voters nor the Legislature or, for that matter, even the State courts, will provide a remedy for this system of taxation. It is precisely this situation which requires the action of this Court.

This Court has held that "rough equality," not artificial distinctions such as duration of residency, must be utilized by a State when it places different burdens on similarly situated citizens. This Court is being asked to require the State of California to do the same here—no more, no less. And if the Court so rules, California has already taken steps to ensure that it is prepared to create, with a minimum of unfairness or surprise, a property taxation system that will be equally applied to all of its citizens.

It is therefore respectfully requested that this Court declare Section 2(a) of Proposition 13 unconstitutional.

Respectfully submitted,

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